Supreme Court, U.S.
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SUPREME COURT OF THE UNITED STATES

October Term, 1996

IN THE MATTER OF BETSEY WARREN LEBBOS

Petitioner

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS

BETSEY WARREN LEBBOS
6580 Northridge Drive
San Jose, California 95120
1-408-927-0677

Petitioner Attorney ***Pro Se***

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QUESTIONS PRESENTED

1. May the Full Faith and Credit clause apply to a decision of a state supreme court which appoints employees to a party?

2. May the Full Faith and Credit clause apply to a decision of a state supreme court which obtains monies to pay its appointees to a party by finding guilt of accuseds?

3. Is the employment, housing, training, providing of staffs, facilities, expenses, offices, pay and benefits to a hearing person by a privately financed party such a bias that the Full Faith and Credit clause may not be applied due to the lack of an impartial adjudicator?

4. May the Full Faith and Credit clause apply to a decision of a state supreme court which wrote and called the party and told her not to mention its conflict of interest and bias issues?

5. Is the Full Faith and Credit restriction of due process of law in a proceeding violated when the hearing person is hired, paid, housed, and trained by a party to the

proceedings?

6. Is the Full Faith and Credit restriction of required Notice in a proceeding violated with proceedings based on seventy nine charges never filed or heard?

7. Is a decision providing Full Faith and Credit a denial of due process of law when one of the statutes upon which the decison rests has subsequently been declared unconstitutional by the federal court?

LIST OF PARTIES

The parties are as follows:

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1-408-927-0677

Petitioner Attorney ***Pro Se***

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SUPREME COURT OF THE UNITED STATES

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IN THE MATTER OF BETSEY WARREN LEBBOS

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS

Petitioner Attorney respectfully prays that a writ of certiorari issue to review the judgment of the Supreme Judicial Court of the Commonwealth of Massachusetts which issued November 13, 1996. Exhibit A.

Said judgment gives full faith and credit to a California disbarment of an attorney in 1991 and does so based on a claim of recognition of the California statutes providing that its State Supreme Court appoints employees to the prosecuting party, the prosecuting party hires and pays its own referees and judges, and ethics statutes which are ABA-rejected, one of which, to wit, the offensive personality statute, has since been declared

unconstitutional by the Ninth Circuit Court of Appeals. See **United States v. Wunsch** 84 F.3d 1110 (Ninth Cir. 1996).

I.

ORDERS BELOW

The judgment of the Supreme Judicial Court of the Commonwealth of Massachusetts is reproduced at the appendix at A.

II.

JURISDICTION

The jurisdiction of this Court is invoked pursuant to 27 U.S.C.A. s. 1257 and United States Supreme Court Rule 19(a) where the state court has decided constitutional issues contrary to the suggestions of this Court in its precedent. This Petition for writ of certiorari is timely filed within the period of time for extension afforded by this Court.

III.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution
Article IV, section 1: " Full Faith and Credit shall be given in

each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings " Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

Amendment XIV: "No State shall .... deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

California Constitution

Article 6, section 1: "The judicial power of the State is vested in the California Supreme Court, the Courts of Appeal, the Superior Courts, and the Municipal Courts. All courts are courts of record."

Article 6, section 9: "The State Bar of California is a public corporation...."

Article 6, section 12: (a) "The California Supreme Court may...

transfer a cause from itself to a court of appeal...The court to which the cause is transferred has jurisdiction."

The state statutes at issue are California Business and Professions Code sections 6068(a),(b),(c),(d),(f),(g), 6079.1, 6079.5, 6086.5, 6086.10, 6086.13, 6086.65(a), 6103, and 6106. They are set forth at Appendix B.

IV.

STATEMENT OF THE CASE

California has legislatively created ethics rules for its attorneys. Those statutes are one hundred and twenty three years old. They are rejected by all of the other states and by the American Bar Association as improper rules for lawyers. They are created by the wrong branch of government. They lack fair notice of the conduct required and proscribed. One of those statutes at issue, the offensive personality statute, upon which the disbarment rests, was declared unconstitutional in 1995 and 1996 by the Ninth Circuit Court of Appeals. See **United States v. Wunsch** 84 F.3d 1110 (Ninth Cir. 1996).

The California Supreme Court created with the State Bar

of California, pursuant to statute, a State Bar Court to license the state's attorneys. The State Bar of California is the prosecuting party. It is privately financed. Its Court is an office within its private organization. It assesses monies for its owner by finding guilt of each accused. It is exempt from state law. It has no rules of procedure or of evidence.

In 1989, the California Supreme Court appointed seven employees and has now appointed ten employees to the State Bar of California to be its judges. It also removes or reappoints these judges. By reason of the private financing of the State Bar of California, the judges employed by it and the Court it runs are financed by assessments of administrative costs imposed on adjudicated guilty attorneys. That sum for the years 1992-1995 now exceeds sixteen million dollars according to the State Auditor's report filed with the Massachusetts Court.

The State Bar of California is the prosecuting party in disciplinary proceedings. The appointed judges are employed, housed, trained, paid and provided their salaries, facilities, offices, retirement, and benefits by the State Bar of California and from

its private funds. Those funds include the assessments they make upon finding attorneys guilty of professional misconduct. The judges and prosecutors are co-employees who are housed, trained, paid and provided their benefits from the same privately financed employer which is the exclusive financial beneficiary of findings of guilt of accused attorneys.

The Petitioner was an attorney at law for twenty five years with no prior record. While she had on-going civil litigation with the State Bar of California, it had *ex parte* had a $32,676.00 judgment entered for its costs. The petitioner moved to set it aside for fraud. The State Bar then filed its charges against the petitioner before its State Bar Court. It prosecuted. It hired and paid its referee. It prevailed on its on disciplinary charges before its own Court and before its own employee referee. It then *ex parte* had another employee referee take the attorney's license by enrolling the attorney as an inactive member. The state court of appeal voided the $32,676.00 judgment the State Bar of California had obtained against the petitioner for lack of notice.

The attorney presented the conflict of interest issues of the California Supreme Court in it appointing employees to the State Bar of California and then hearing and deciding cases in which the State Bar of California was the prosecuting party. It wrote the attorney twice and called her. It told her not to mention these issues as it did not wish to hear them. Those certified letters were filed with Massachusetts and are on record. She mentioned the issues and was disbarred. The disbarment was not on the charges filed. It contained seventy nine charges never filed or heard.

While the certified records on file with the Supreme Judicial Court of the Commonwealth of Massachusetts admit the disbarment was based on these letters and phone call and seventy nine charges never filed or heard, and not on the charges that were filed, and the transcript testimony and exhibits filed indicated no misconduct occurred, the Massachusetts judgment did not address the substance of the constitutional issues presented by the attorney.

Judicial notice of the statutes in California indicate the

partisan role of the California Supreme Court and each of the lower level adjudicators, the financial interest in takings of attorneys' licenses within that State, and the vague and A.B.A.-rejected legislatively created ethics provisions which are one hundred and twenty three years old upon which the findings depend.

"Section[s]" refers to sections of the California Business and Professions Code.

V.

REASONS FOR GRANTING THE WRIT

A. The Public and Active Participation of all of The members of a State Supreme Court on behalf of a Party denies Due Process and may not be given Full Faith and Credit by Another State

This Court established in **Griffin v. Griffin** 327 U.S. 220 (1946) that the full faith and credit clause does not apply when a state's proceedings do not conform to the minimum United States constitutional requirements of due process of law. Those minimum requirements are notice, an opportunity to be heard, and an impartial adjudicator. See **Aetna Life Insurance**

Company v. La Voie 475 U.S. 813, 89 L. Ed. 823.

1. The Partisan Role of the California Supreme Court for the Prosecuting Party Poses Due Process Problems

Based on this Court's statement that the test is whether the situation offers a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear, and true between the State and the accused, **Aetna Life Insurance Company v. La Voie** 475 U.S. 813, 89 L. Ed. 823, 106 S. Ct. 1580 (1988), is not a situation where a State Supreme Court appoints employees to a prosecuting party to be its "judges," whose recommendations it then reviews, when the party employing its appointees is privately financed, and where by finding guilt of each accused, it orders monies paid as "costs" to reimburse the party for the salaries and benefits of not only its appointees to a party, but for their co-employees as well, and orders monies for its appointees' employer's private fund for its appointees to give out to the Public, such a situation of temptation to not hold the balance nice, clear, and true, that a

finding of bias within the California State Supreme Court Justices is required which warrants a non-application of the full faith and credit clause by a sister state. [1]

B. Administrative Adjudicators Selected, Hired, and Employed by a Party are not a Fair and Impartial Adjudicator consistent with Due Process of Law

Based on **Gibson v. Berryhill** 411 U.S. 564, 578-79, 36 L. Ed. 2d 488, 93 S. Ct. 1689 (1972), and pursuant to this Court's holding in **Ward v. Village of Monroeville** 409 U.S. 57, 93 S.Ct. 80, 34 L.Ed.2d.267 (1972), even if there had been neutral review by the State Supreme Court, the fact that the adjudicatory proceedings in the lower levels lacked a fair and impartial adjudicator denies to a party fundamental due process of law. A party has a constitutional right to a fair and impartial adjudicator in the first instance, *de novo* review being irrelevant.

Are not the statutes providing for the employment, housing, training, providing of all staff, expenses, facilities, pay,

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1 Massachusetts was requested to take judicial notice of the California statutes which create the bias in each adjudicative layer. Its decision declined to address the bias issues. Exhibit A.

expenses, and benefits for an adjudicator by a privately financed party appearing before the adjudicator such bias that the full faith and credit clause does not apply?

C. Administrative Adjudicators Selected, Hired, and Employed by a Party which is The Exclusive Financial Beneficiary of Findings of Guilt denies Due Process of Law

The California system provides for three layers of awards which are imposed on adjudged guilty attorneys: the salaries and benefits of the referee or judge and his co-employee prosecutor and investigators, sanctions to fund the State Bar Client Security Fund, and forced enrollment in sections, examinations, schools, classes owned and run by the State Bar.

Proceedings conducted by members of a Board of a State Bar Association wherein they desired to recoup the Association's investigative costs by finding guilt of accuseds and imposing those costs upon the adjudged guilty attorneys were voided for lack of due process of law. **Matter of Ross** 656 P. 2d. 832, 838, 99 Nev.1 (Nev. 1983).

Is not a system where findings of guilt of accuseds is

motivated by a desire to recoup one's salary and benefits and to fund private programs of the adjudicator's employer a denial of due process of law that is not entitled to full faith and credit in another state?

D. The California Ethics Statutes Lack Fair Notice and may not be Credited in Another State

While the judgment mentions that the petitioner raised the lack of notice in the California proceedings, it does not dispute that which was presented by certified record to it: the California disbarment was not based on the charges filed. It was based on seventy nine charges never filed or heard.[2]

The judgment mentions that an issue presented is "California's ethical code is unconstitutionally vague." Refer footnote 1. It is so vague that one of the statutes upon which the disbarment rests, the offensive personality statute, was

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2 The judgment states, "The respondent asks that this court not give reciprocal effect to the decision rendered against her in California because, she claims, California's ethical code is unconstitutionally vague, she was not given proper notice and opportunity to be heard, the tribunal hearing the charges was not impartial, there was an absence of proof establishing her misconduct, the misconduct does not warrant similar discipline here, and, finally, disbarment would work a grave injustice."

subsequently declared unconstitutional for vagueness by the Ninth Circuit Court of Appeals in **United States v. Wunsch** 84 F.3d 1110 (Ninth Cir. 1996). This fact and the decision was presented to the Massachusetts tribunal.

The disbarment rests not on judicial rules for conduct of attorneys, but on statutes passed by another branch of government. These statutes were passed over one hundred and twenty three years ago. They have, as in **United States v. Wunsch, supra**, never received any limiting construction by the state courts. Those statutes are as follows:

- It is the duty of an attorney to support the Constitution and laws of the United States and of this State. (Section 6068(a), count five)
- It is the duty of an attorney to maintain the respect due to the courts of justice and judicial officers. (Section 6068(b), counts five and eight)
- It is the duty of an attorney to counsel or maintain such actions, proceedings, or defenses only as appear to him or her legal or just, except for the

defense of a person charged with a public offense. (Section 6068(c), count eight)

- It is the duty of an attorney to employ, for the purposes of maintaining the causes confided to him or her such means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law. (Section 6068(d), which is almost identical to rule 7-105(1), counts 2-5,7-9)
- It is the duty of an attorney not to encourage either the commencement or the continuance of an action or proceeding from any corrupt motive of passion or interest. (Section 6068(g), counts five and eight)
- Any violation of the oath taken by him, or of his duties as such attorney, constitutes causes for disbarment or suspension. (Section 6103, counts

two through nine)[3]

- The commission of any act of involving moral turpitude, dishonesty, or corruption, whether the act is committed in the course of his relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not, constitutes a cause for suspension or disbarment." (Section 6106, counts two-four, six -eight)

Is it not easy to find dishonesty and moral turpitude if bias is operating in the adjudicator's eyes concerning any act an attorney may commit? Is it not easy to be righteously indignant at claimed language of an attorney which is based on someone claiming that he overheard someone say what someone else allegedly said in a private conversation or intercepted a private letter of an attorney and being permitted to have that used as a

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[3] This statute also provides that "A willful disobedience or violation of an order of the court requiring him to do or forbear an act connected with or in the course of his profession, which he ought in good faith to do or forbear, constitutes causes for disbarment or suspension." However, this disbarment does not contend there was any violation of any court order. Refer counts two through nine, Appendix A-87-A-88.

basis for the claimed violations of such ephemeral and subjective statutes as the above?

Over 4,000 attorneys in six years have had their licenses impaired by a private, for personal profit attorney disciplinary system which has profited itself over sixteen million dollars in four of those six years by using vague and no notice statutes to claim innocent acts are misconduct. When will this be stopped by the United States Supreme Court when the unconstitutionality of this system emanates directly from the California Supreme Court?

The California statutes and the lack of notice of the seventy nine findings deny the most basic requirement of due process of law- Notice. There is no notice of that which is prohibited or required and there was no notice of what were the charges. As held in **In re: Ruffalo** 390 U.S. 591, 88 S. Ct. 1222, at 1226, an attorney in disbarment proceedings must be given notice of the precise nature of the charges made and fair notice of the reach of the proceedings in advance of hearing, not after hearing. With a disbarment admittedly based on seventy nine charges never filed or heard, and the actual ones filed never

mentioned, this attorney was denied due process of law.

As held in **Gentile v. State Bar of Nevada** 501 U.S. 1030, 115 L. Ed. 2d. 888, 111 S. Ct. 2720 (1991), attorney ethics rules must be crafted with care so as to provide fair notice to attorneys of that which they may do and that which is prohibited, especially when, as in this case, the "oath, respect due courts, corrupt motives of passion or interest, maintaining legal or just actions, moral turpitude" statutes are applied to speech and protected conduct.

Was not the lack of notice a denial of due process of law such that the full faith and credit clause could not be constitutionally applied to the California judgment?

CONCLUSION

By reason of judicial notice of the California statutes which provide for a state supreme court which has appointed employees to the prosecuting party and who awards monies to its appointees' employer by finding guilt of each accused, the statutes providing that the prosecuting party hires and pays its own judges, the vague and subjective statutes lacking fair notice,

and the lack of notice of the seventy nine charges, is not the decision providing full faith and credit to such a State's proceedings in conflict with this Court's holding in **Griffin, supra**, that such denials of due process of law may not to be given full faith and credit by another state?

RESPECTFULLY SUBMITTED,

Dated: April 11, 1997

Betsey Warren Lebbos

BETSEY WARREN LEBBOS
Petitioner Attorney ***Pro Se***

Verification

I have read the foregoing Petition for Writ of Certiorari to the Supreme Judicial Court of the Commonwealth of Massachusetts and state it is made on my own personal knowledge, information, and belief, and this verification is executed this 11th day of April, 1997 at San Jose, California.

RESPECTFULLY SUBMITTED,

Betsey Warren Lebbos

BETSEY WARREN LEBBOS
Petitioner Attorney *Pro Se*

APPENDIX

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A. Judgment of the Supreme Judicial Court of the Commonwealth of Massachusetts, November 13, 1996

B. California Statutes

IN THE MATTER OF BETSEY WARREN LEBBOS

SJC-06715

SUPREME JUDICIAL COURT OF MASSACHUSETTS

423 Mass. 753; 672 N.E.2d 517; 1996 Mass. LEXIS 307

September 9, 1996, Argued, November 13, 1996, Decided

PRIOR HISTORY: Suffolk. Petition for reciprocal discipline filed in the Supreme Judicial Court for the county of Suffolk on March 28, 1991. DISPOSITION: Judgment affirmed.

SYLLABUS: Attorney at Law, Disbarment, Reciprocal discipline.

COUNSEL: Betsy Warren Lebbos, of California (Terry Flukes with her) pro se. Terence M. Troyer, Assistant Bar Counsel.

JUDGES: Present: Wilkins, C.J., Abrams, Lynch, Greaney, & Fried, JJ.

OPINION BY: FRIED

OPINION: FRIED, J. The respondent, Betsey Warren Lebbos, was disbarred in California by a final order of the Supreme Court of California. **Lebbos v. State Bar of Cal.**, 53 Cal. 3d 37, 278 Cal. Rptr. 845, 806 P.2d 317, cert. denied, 502 U.S. 932, 116 L.

Ed. 2d 291, 112 S. Ct. 352 (1991). Pursuant to S.J.C. Rule 4:01, @ 16, as amended, 402 Mass. 1302 (1988), proceedings to impose reciprocal discipline were instituted. The respondent was disbarred pursuant to a judgment entered by a single justice of this court on September 8, 1994. The respondent appealed to the full court. The respondent urges that the California proceedings and judgment were defective in several respects and thus should not serve as the basis of a reciprocal sanction of disbarment. We affirm the judgment of the single justice disbarring the respondent.

I. In 1989 bar counsel filed a certified copy of an order involuntarily transferring the respondent to inactive status (temporary suspension) which had been entered against the respondent in California. The single justice suspended her temporarily on the basis of the California order. The respondent appealed to the full court and we affirmed. **Matter of Lebbos,** 407 Mass. 1010, 555 N.E.2d 233 (1990), cert. denied, 498 U.S. 1040, 112 L. Ed. 2d 700, 111 S. Ct. 711 (1991). After the Supreme Court of California issued its final judgment and order

disbarring the attorney, the single justice ordered reciprocal disbarment, and it is from that order that she appeals. In March of 1991, the Supreme Court of California, acting on the recommendation of the review department of the California State Bar Court, disbarred the respondent for numerous violations of the California State Bar Rules of Professional Conduct. **Lebbos v. State Bar of Cal., supra.** The California Supreme Court summarized its findings as follows: "[The respondent] commingled client funds; served on counsel and filed with the court an altered copy of a court order, with intent to deceive; concealed assets from a judgment creditor; unilaterally altered and filed as genuine a stipulation; refused to abide by a court's order recusing itself and lied to a client with respect to that order; and named a person as a plaintiff in a lawsuit without the person's knowledge or consent."

The respondent asks that this court not give reciprocal effect to the decision rendered against her in California because, she claims, California's ethical code is unconstitutionally vague, she was not given proper notice and opportunity to be heard, the

tribunal hearing the charges was not impartial, there was an absence of proof establishing her misconduct, the misconduct does not warrant similar discipline here, and, finally, disbarment would work a grave injustice.

II Supreme Judicial Court Rule 4:01, @ 16, is intended to preserve the integrity of the bar in this Commonwealth and to protect the public.[4] Discipline is based on a judgment that an attorney has behaved in such a way that she is no longer worthy

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[4] Supreme Judicial Court Rule 4:01, @ 16, as amended, 402 Mass. 1302 (1988), provides in pertinent part as follows: "(1) Upon receipt of a certified copy of an order that an attorney admitted to practice in this Commonwealth has been suspended or disbarred from the practice of law in another jurisdiction (including any Federal court and any State or Federal administrative body or tribunal), this court shall issue a notice directed to the respondent-attorney containing: (a) a copy of the order from the other jurisdiction; and (b) an order directing that the respondent-attorney inform the court within thirty days from service of the notice of any claim by him that the imposition of the identical discipline in this Commonwealth would be unwarranted and the reasons therefor. The Bar Counsel shall cause this notice to be served in hand upon the respondent - attorney. . . .

"(3) Upon the expiration of thirty days from service of the notice under subsection (1) above, the court, after hearing, may enter such order as the facts brought to its attention may justify and, in any event, may impose the identical discipline unless the Bar Counsel or the respondent-attorney establishes, or the court concludes, that (a) the procedure in the other jurisdiction did not provide reasonable notice or opportunity to be heard; (b) there was significant infirmity of proof establishing the misconduct; © imposition of the same discipline would result in grave injustice; or (d) the misconduct established does not justify the same discipline in this Commonwealth."

of the trust the courts and public must place in her representations, her conduct, and her character. That attorney is not suddenly rehabilitated when she crosses a State line. Permitting an attorney suspended or disbarred in one State to practice law in the Commonwealth rightly tends to undermine public confidence in the effectiveness of attorney disciplinary procedures and threatens harm to the administration of justice and to innocent clients. As in other matters, we repose confidence in and accord deference to the lawful procedures of our sister States. Accordingly, we generally give effect to the disc plinary decisions of another jurisdiction without undertaking the often difficult and protracted task of redoing the inquiry which has already been concluded there. But because the consequences for the attorney are grave and the responsibility of judgment is still ours, such deference does not automatically lead to reciprocity. See **Matter of McCabe**, 411 Mass. 436, 583 N.E.2d 233 (1991). We consider whether the proceedings accord with our notions of fairness and whether the grounds for the discipline correspond to our own criteria of attorney probity.

Rule 4:01, @ 16, implicitly adopts a modified rule of res judicata whereby the disciplinary action taken by a foreign jurisdiction will be adopted here unless: "(a) the procedure in the other jurisdiction did not provide notice or opportunity to be heard; (b) there was significant infirmity of proof establishing the misconduct; © imposition of the same discipline would result in grave injustice; or (d) the misconduct established does not justify the same discipline in this Commonwealth." S.J.C. Rule 4:01, @ 16 (3). "Rule 4:01, @ 16, clearly preserves our discretion to examine the record from another jurisdiction . . . furthermore, in order for us to decide how an attorney's out-of-State conduct affects his right to practice here, that conduct must be subjected to some degree of scrutiny." **Matter of McCabe, supra** at 441 n.10. The factual aspect of our inquiry, however, is generally limited to determining whether the attorney received a fair hearing at which sufficient evidence was presented to justify our taking reciprocal disciplinary action. Id. at 450. Cf. **Matter of Calvo**, 88 F.3d 962, 967-968 (11th Cir. 1996).

III A We reject the respondent's claims that the hearing

accorded her was unfair in that she was denied notice and an opportunity to be heard and that the tribunal was biased and incompetent. Lebbos was served with a notice to show cause alleging nine separate counts of professional malpractice, some of which included multiple incidents of alleged misconduct. After ample time to prepare her defense, a hearing was held at which she was present. Though given the opportunity to call witnesses and testify on her own behalf, she did neither. She argues in this court that she was denied due process because the referee assigned to hear her case, a retired California judge, was hard of hearing, inattentive, and biased. We are hesitant in a reciprocal disciplinary procedure to reexamine every aspect of the proceedings which took place in the foreign jurisdiction, particularly where an appellate forum exists in that jurisdiction which may and did address these particular concerns. The issue of the presiding judge's competence has already been properly litigated, and we defer to the opinion of the Supreme Court of California that "the referee performed creditably under extremely trying circumstances." **Lebbos v. State Bar of Cal., supra** at

49. The attorney also contends that there was insufficient proof to establish the misconduct charges. In California the burden of proof required in a disciplinary matter rests with the State bar to establish "by convincing proof to a reasonable certainty" that the attorney is culpable as to each charge. **Price v. State Bar of Cal.**, 30 Cal. 3d 537, 547, 179 Cal. Rptr. 914, 638 P.2d 1311 (1982). Lack of evidence would provide a valid basis for us to refrain from imposing reciprocal discipline. **Matter of McCabe, supra** at 440, 450. The hearing in this case lasted several days, the testimony of numerous witnesses as well as documentary evidence of misconduct were presented by the State bar. The referee issued an eighty-one page opinion containing dozens of findings of fact. The Supreme Court of California, having made an independent review of the record, assures us that "overwhelming, competent evidence indicates that [the respondent] should be disbarred." **Lebbos v. State Bar of Cal., supra** at 49. There is no reason to disagree.

B Having concluded that the respondent was given fair notice and an opportunity to be heard, and that ample evidence was

presented supporting the charges, the remaining questions are whether the misconduct justifies the same discipline here as in California and whether grave injustice would result by its imposition. The respondent mounts a vigorous argument that not only are the grounds for her California disbarment not sufficiently similar to the grounds for disbarment here to warrant a reciprocal sanction, but that indeed the grounds for her disbarment are so defective as to violate the United States Constitution. In particular she refers to charges against her relating to her persistent and extravagant criticism of judges, lawyers, the bar and the judicial system. We shall not enliven the pages of the Massachusetts Reports by recounting some of the more colorful epithets and incidents which are charged to her account. See **Lebbos v. State Bar of Cal., supra** at 45. There may indeed be constitutional difficulties about disciplining a lawyer for criticisms of this sort if they occur outside of the courtroom, and the United States Court of Appeals for the Ninth Circuit has recently found that certain of the rules under which the respondent was charged violated the Federal Constitution.

United States v. Wunsch, 84 F.3d 1110 (9th Cir. 1996). But this contention has no bearing at all on the matter before us. The Supreme Court of California specifically stated that its judgment rested sufficiently on the charges we have detailed above and that therefore it was "putting aside" its consideration of the respondent's verbal attacks or the "fine points" of some of the epithets she deployed in referring to a member of the judiciary. **Lebbos v. State Bar of Cal., supra.** The court rested its judgment on the charges set out at the beginning of this opinion. The conduct it described so obviously and grossly violates the standards of elementary honesty demanded of an attorney, in this or any jurisdiction, that it would unduly prolong this opinion to explain why they are a sufficient basis for discipline here. Id. at 849 ("Multiple acts of misconduct involving moral turpitude and dishonesty warrant disbarment" citing standards for attorney sanctions). Judgment affirmed.

California Statutes

THE STATE BAR ACT

California Business and Professions Code

Section 6068(a)-" It is the duty of an attorney to support the Constitution and laws of the United States and of this State."

Section 6068(b)- "It is the duty of an attorney to maintain the respect due to the courts of justice and judicial officers."

Section 6068(c)-"It is the duty of an attorney to counsel or maintain such actions, proceedings, or defenses only as appear to him or her legal or just, except for the defense of a person charged with a public offense.

Section 6068(d)- "It is the duty of an attorney to employ, for the purposes of maintaining the causes confided to him or her such means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law.

Section 6068(g)- It is the duty of an attorney not to encourage either the commencement or the continuance of an action or proceeding from any corrupt motive of passion or

interest."

Section 6103- "Any violation of the oath taken by him, or of his duties as such attorney, constitutes causes for disbarment or suspension.

Section 6106- "The commission of any act of moral turpitude, dishonesty, or corruption, whether the act is committed in the course of his relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not, constitutes a cause for disbarment or suspension."

Section 6001. STATE BAR; PERPETUAL SUCCESSION; SEAL; REVENUE; POWERS; LAWS APPLICABLE

The State Bar of California is a public corporation. It is hereinafter designated as the State Bar.. . .No law of this state restricting, or prescribing a mode of procedure for the exercise of powers of state public bodies or state agencies, or classes thereof, including, but not by way of limitation, the provisions contained in Division 3 (commencing with section 11000), Division 4 (commencing with section 16100), and Part 1(commencing with

section 18000) and Part 2 (commencing with section 18500) of Division 5, of Title 2 of the Government Code, shall be applicable to the State Bar, unless the legislature expressly so declares. (Origin: State Bar Act, sec. 2. added by Stats. 1939, ch 34. Amended by Stats. 1957, ch. 1526; Stats. 978, ch. 380; Stats. 1988, ch. 1149.)

Section 6079.1 STATE BAR COURT HEARING JUDGES

(a) The Supreme Court shall appoint a presiding judge of the State Bar Court and no fewer than seven hearing judges, and any additional hearing judges as may be authorized by the Legislature, to efficiently decide any and all regulatory matters pending before the Hearing Department of the State Bar Court. . .

© The board shall screen and rate all applicants for appointment or reappointment as a State Bar Court judge, and submit its nominations to the Supreme Court, unless otherwise directed by the Supreme Court. . .

(d) For judges appointed pursuant to this section or Section 6086.65, the board shall fix and pay reasonable compensation and

expenses and provide adequate supporting staff and facilities.

Section 6079.5 CHIEF TRIAL COUNSEL; APPOINTMENT; TERM; QUALIFICATIONS

(a) The board shall appoint a lawyer admitted to practice in California to serve as chief trial counsel. . .

Section 6086.5 STATE BAR COURT; ESTABLISHMENT; POWERS; RULES

The board of governors shall establish a State Bar Court, to act in its place and stead in the determination of disciplinary and reinstatement proceedings and proceedings pursuant to subdivisions (b) and © of section 6007 to the extent provided by rules adopted by the board of governors pursuant to this chapter.

. Section 6086.10 PAYMENT OF COSTS OF DISCIPLINARY PROCEEDINGS

(a) Any order imposing a public reproval on a member of the State Bar shall include a direction that the member shall pay costs. In any order imposing discipline, or accepting a resignation with a disciplinary matter pending, the Supreme Court shall include a direction that the member shall pay costs.

(b) The costs required to be imposed pursuant to this section include all of the following:

(1) The actual expense incurred by the State bar for the original and copies of any reporter's transcript of the State Bar proceedings, and any fee paid for the services of the reporter.

(2) All expenses paid by the State Bar which would qualify as taxable costs recoverable in civil proceedings.

(3) The charges determined by the State Bar to be "reasonable costs" of investigation, hearing, and review. These amounts shall serve to defray the costs, other than fees for the services of attorneys or experts, of the State bar in the preparation or hearing of disciplinary proceedings, and costs incurred in the administrative processing of the disciplinary proceedings and in the administration of the client security fund.

. .

(d) In the event an attorney is exonerated of all charges following a formal hearing, he or she is entitled to reimbursement from the State bar in the amount determined by the State bar to be the reasonable expenses, other than fees for attorneys or

experts , of preparation for the hearing. (Added by Stats. 1986, ch. 662.)

Section 6140.7 DISCIPLINARY COSTS ADDED to MEMBERSHIP FEE

Costs assessed against a publicly reproved or suspended member shall be added to and become a part of the membership fee of the member, for the next calendar year. Costs unpaid by a member who resigns with disciplinary charges pending or by a member who is suspended of disbarred shall be paid as a condition of reinstatement of membership.

No. 96-1636

Supreme Court, U.S.
FILED
MAY 15 1997
OFFICE OF THE CLERK

In the
SUPREME COURT OF THE UNITED STATES
October Term, 1996

In the Matter of

BETSY WARREN LEBBOS,

Petitioner

BRIEF IN OPPOSITION TO CERTIORARI

Terence M. Troyer
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May 14, 1997

QUESTIONS PRESENTED FOR REVIEW

It is the view of the respondent that this case, the petitioner's tenth petition for certiorari, presents no federal questions for review.

The petitioner seeks to challenge various California statutes and also the practices and procedures of the State Bar of California. The "Questions Presented" which appear at pages i-ii of her petition are directed to those matters. They assume the existence of facts which are not reflected in the record and which the petitioner never explains or justifies.

In any event, California statutes, practices, and procedures cannot fairly be evaluated by reviewing a decision of the Supreme Judicial Court of Massachusetts.

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No. 96-1636

In the
SUPREME COURT OF THE UNITED STATES
October Term, 1996

IN THE MATTER OF BETSY WARREN LEBBOS

BRIEF IN OPPOSITION TO CERTIORARI

STATEMENT OF THE CASE

This is at least the tenth petition for certiorari which the petitioner has filed following the institution of bar discipline proceedings against her in the State of California. See *Lebbos v. Arguellos*, 507 U.S. 918 (1993); *Lebbos v. State Bar*, 502 U.S. 989 (1991); *Lebbos v. State Bar*, 502 U.S. 932 (1991); *McNamee v. State Bar*, 502 U.S. 930 (1991); *Matter of Lebbos*, 498 U.S. 1040 (1991); *Lebbos v. San Jose Mun. Ct.*, 495 U.S. 970 (1990); *Lebbos v. State Bar*, 493 U.S. 1039 (1990); *Lebbos v. State Bar*, 493 U.S. 938 (1989); *Lebbos v. State Bar*, 492 U.S. 935 (1989).

The petitioner was admitted to the practice of law in both California and Massachusetts. In 1991, she was disbarred in California, and certiorari was denied by this court. *Lebbos v. State Bar*, 53 Cal. 3d 37, 806 P.2d 317, 278 Cal. Rptr. 845, *cert. denied* 502 U.S. 932 (1991). The California Supreme Court's action was based on findings that

> [The petitioner] commingled client funds; served on counsel and filed with the court an altered copy of a court order, with intent to deceive; concealed assets from a judgment creditor; unilaterally altered and filed as genuine a stipulation; refused to abide by a court's order recusing itself and lied to a client with respect to that order; and named a person as a plaintiff in a lawsuit without the person's knowledge or consent.
>
> 423 Mass. at 754

The decision of the California Supreme Court was brought to the attention of the Massachusetts Court, which ordered the petitioner to show cause why she should not be disbarred in Massachusetts. She responded to the show cause order by challenging the validity ("existence") of the California State Bar Court (See 278 Cal. Rptr. at 848-849), by asserting that there had been a significant infirmity of

proof in California, and by arguing that the misconduct does not warrant similar discipline here. 423 Mass. at 754.

The petitioner's objections were heard by a single justice of the Massachusetts Supreme Judicial Court. After hearing, he entered a reciprocal order of disbarment. *Matter of Lebbos*, 10 Mass. Att'y Disc. R. 175 (1994). The petitioner appealed, and the Supreme Judicial Court affirmed. *Matter of Lebbos*, 423 Mass. 753, 672 N.E.2d 517 (1996)

REASONS FOR DENYING THE WRIT

I. THE PETITIONER'S CURRENT PETITION DOES NOT PRESENT ANY FEDERAL QUESTION.

By this petition for certiorari, the petitioner seeks review of the actions of the Supreme Judicial Court of Massachusetts, not of the actions of the Supreme Court of California. Indeed, her petition for review of the actions of the California court has already been denied. *Lebbos v. State Bar*, 53 Cal. 3d 37, 806 P.2d 317, 278 Cal. Rptr. 845, *cert. denied* 502 U.S. 932 (1991). Nevertheless, she does not claim that the proceedings in Massachusetts were deficient in any particular or that she was deprived of any substantial

federal right in Massachusetts. All of her objections are to the California proceeding.

The Massachusetts proceeding was controlled by Supreme Judicial Court Rule 4:01, § 16(3). That rule is substantially identical to the model rules promulgated by the American Bar Association (ABA Model Rules for Lawyer Disciplinary Enforcement, § 22(D) (1989); ABA Model Federal Rules of Disciplinary Enforcement, § II(D) (1978)) which have been widely adopted by both state and federal courts. See, e.g., First Circuit Rules of Disciplinary Enforcement § II(D); District of Massachusetts Local Rule 83.6. These rules follow the principles set out by this court in the leading case of *Selling v. Radford*, 243 U.S. 46 (1917).

Thus, S.J.C. Rule 4:01, § 16(3), requires the court to consider four matters before imposing reciprocal discipline. The court must determine whether

> (a) the procedure in the other jurisdiction did not provide reasonable notice or opportunity to be heard;
>
> (b) there was significant infirmity of proof establishing the misconduct;
>
> (c) imposition of the same discipline would result in grave injustice; or

(d) the misconduct established does not justify the same discipline in this Commonwealth.

The Supreme Judicial Court performed this task and concluded "that the respondent was given fair notice and an opportunity to be heard, and that ample evidence was presented supporting the charges." 423 Mass at 757. The Court also held that the misconduct found by the California Court "obviously and grossly violates the standards of elementary honesty demanded of an attorney" and is a sufficient ground for disbarment. 423 Mass. at 758.

This procedure is significantly more restrictive and exacting than the procedure adopted by this Court. See Sup. Ct. R. 8(a). It fully comports with all requirements of the constitution. The petitioner does not advance any argument to the contrary. In short, there is no suggestion anywhere in the Petition for Certiorari that the Massachusetts court and authorities have contravened any of the petitioner's rights.

II. THE PETITIONER'S CHALLENGE TO CALIFORNIA BAR DISCIPLINE PROCEDURES DOES NOT PRESENT A CASE OR CONTROVERSY.

Essentially all of the petitioner's arguments are directed to the structure of the agencies which administer bar discipline in California and to the propriety of the procedures employed by those agencies. But the agencies and procedures which she challenges do not appear to be those by which she was disbarred. Rather, she seeks to challenge amended statutes which went into effect after her offenses and which are not applicable to her case.

> Petitioner may not attack the current language of [sections 6084(a), 6086.5, and 6079.1 of the California Business & Prof. Code], however, because her disciplinary proceeding did not occur under their authority. Rather, the disciplinary proceedings in her case were conducted pursuant to the State Bar Act as it existed prior to the amendments enacted by the 1988 Legislature.
>
> *Lebbos v. State Bar*, 278 Cal. Rptr at 851

The petitioner's attempt to litigate the constitutionality of statutes which do not pertain to her case does not present an Article III case or controversy. U.S. Const., Art. III, Cl. 2. Whatever objections she has to the "housing, training,

providing of all staff, expenses, facilities, pay, expenses, and benefits" for the California State Bar Court (Pet. pp. 10-11), she cannot raise them in this case.

III. THE PETITIONER'S CHALLENGE TO HER MASSACHUSETTS DISBARMENT DOES NOT PROVIDE A FAIR OPPORTUNITY TO EVALUATE THE PROPRIETY AND ACCEPTABILITY OF CALIFORNIA BAR DISCIPLINE AGENCIES AND PROCEDURES.

The petitioner obviously has long-standing objections to the agencies and procedures by which bar discipline is enforced in California. Although her arguments are difficult to follow, it seems that she is challenging a routine and unremarkable administrative tribunal established for the resolution of bar discipline disputes. She appears to make three claims: First, that the California Supreme Court appoints employees of the administrative agency (the State Bar of California, an integrated bar). Second, that one branch of the administrative agency prosecutes attorneys while another branch performs the adjudicative functions. Third, that the judicial branch of the agency is empowered to assess costs.

Nowhere in the record is there any evidence concerning these allegations. The petitioner suggests that they are the proper subject of judicial notice, but she does not explicitly direct the Court's attention to statutes which she wants noticed, and the statutes included in her appendix do not clearly support her allegations. Further, even if the statutes do establish the allegations, the impact of the rules on the petitioner's cases is purely a matter of conjecture. There is absolutely nothing to explain why the petitioner would challenge such seemingly normal and routine rules.

It would be improvident to consider the petitioner's arguments in the present case. Not only is the record of the California proceedings incomplete and inadequate, the respondents have neither the expertise nor the interest to defend properly. The respondents are residents and officials of Massachusetts. They have no familiarity with nor interest in the statutes of California. If the Court wishes to consider the propriety of California bar discipline proceedings, it should do so in a more appropriate case.

CONCLUSION

The petition for certiorari should be denied.

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